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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

"Amy," et. al.,

Plaintiffs,

v.

RANDALL STEVEN CURTIS

Defendant.

Case No: 4:19-CV-02184PJH

SUPPLEMENTAL DECLARATION OF
CAROL HEPBURN IN CLARIFICATION
OF PLAINTIFFS' REPLY ON
PLAINTIFFS' MOTION TO STRIKE
AFFIRMATIVE DEFENSES

NOTE ON MOTION CALENDAR:

Date: October 5, 2020

Time: 9:00 a.m.

Judge: Honorable Phyllis J. Hamilton

Chief United States District Court Judge

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4 I, CAROL L. HEPBURN hereby declare as follows:

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6 1. I am an attorney licensed to practice law in the States of Washington and Oregon, and I am
7 admitted Pro Hac Vice for this case, in the State of California.

8
9 2. I represent the Plaintiffs herein. I make this Declaration in support of Plaintiffs'
10 Supplemental Reply in Support of Plaintiffs' Motion to Strike Affirmative Defenses.

11
12 3. I make this declaration to clarify language in Plaintiffs' Reply brief (dkt. #111) at p.6
13 ll.13-19 which I have been informed may be interpreted in a manner at odds with what was
14 intended to be communicated factually. In late July 2019 Plaintiffs' counsel in this matter were
15 led to believe that Mr. Balogh had likely received identifying information concerning Plaintiffs
16 from the Government during the course of the criminal prosecution. This belief was based upon
17 statements made by Mr. Balogh and by his failure to answer direct questions concerning what, if
18 any, identifying information he had received. This issue resurrected the concerns and
19 contentions with the Government that Plaintiffs' counsel had had during the criminal prosecution
20 during the months of June and July 2018 in the underlying criminal case. At that time Plaintiffs'
21 counsel and the prosecutors were in communication about the possibility that identifying
22 information would be released by the Government to defense counsel as a part of the restitution
23 process. Mr. Marsh's statements referenced in the Reply brief herein were made concerning the
24 "prospect" of such release of identifying information without notice to the victims' counsel. In
25 reality, we thereafter learned that no such release of information had in fact been made by the
26 Government, and a review of prior email correspondence, and closer reading of the proposed
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1 stipulation sent to victims' counsel before filing with the court showed that the Government was
2 not mandated by the stipulation to disclose such information.

3 4. The proposed stipulation (dated June 25, 2018) between the Defendant Curtis and
4 the Government was provided to victims' counsel prior to filing with the court and entry of the
5 order upon which it was based. However, due to the press of other matters with short timelines
6 on victims' counsel's agenda at that time, victims' counsel did not have an opportunity to talk
7 directly to the prosecutors about the stipulation and process involved prior to the filing of the
8 stipulation. Victims counsel interpreted the filing of the stipulation, (and particularly the
9 wording "the United States seeks to produce to the defense certain highly confidential discovery
10 material") and subsequent entry of the order as providing for the release of the identifying
11 information regardless of the victims' concerns. (Dkt. #89 in *U.S. v. Curtis*, 16-cr-00510.)
12 Subsequent contentious conversations ensued between prosecutors and victims'
13 counsel. Victims' counsel were ultimately assured in 2018 that no such release of identifying
14 information had been made. In 2019 when Mr. Balogh intimated that he had in fact received
15 such information and refused to respond to direct questions as to whether he had or had not
16 received such information, the Plaintiffs' counsel were again worried about disclosure of the
17 victims' identifying information.

18 5. The purpose of this Declaration is to clarify the factual statements made in the
19 Reply memo and to correct any possible inferences that the Plaintiffs' counsel believe that the
20 prosecutors in the underlying criminal matter may have committed any improper acts or violated
21 the victims' rights under the CVRA. Such is not the case. While there were concerns in mid
22 2018 and again in 2019 a review of the entire circumstances demonstrates that no such improper
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1 acts or failure to communicate took place. It is not the intention of Plaintiffs' counsel to assert
2 that any wrongdoing took place.

3 I hereby declare under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct to the best of my knowledge.
5

6 DATED this 18th day of September, 2020.

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8 CAROL L. HEPBURN, P.S.

9 By /s Carol L. Hepburn
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CLARIFICATION OF PLAINTIFFS' REPLY ON
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